UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/912,636
Filing Date: July 24, 2001
Appellant(s): SCHWARTZ, ELLIOT

Alan Heimlich / Reg 48,808
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11/29/2007 appealing from the Office action

mailed 3/23/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Bavadekar. 2003/0009571 A1. (Jan 09,2003)

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

1.   Claims 1-27 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. (i.e.: a first layer, second layer, multiplexing layer and tunneling layer were abstract idea).

Claim Rejections - 35 USC § 102

Claims 1-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Bavadekar [2003/0009571 A1] .

2.   As per claim 1, Bavadekar discloses a computer network architecture comprising:

a first layer including a transmission control protocol connection [Bavadekar, TCP connection, 0050];

a second layer including a hyper text transfer protocol connection built upon the first layer [Bavadelar, HTTP tunnel, 0050];

a first tunneling layer including a first tunneling protocol built upon the second layer to tunnel a message through the hyper text transfer protocol connection [Bavadekar, HTTP tunnel broker driver 240; HTTP tunnel servlet 214, Fig 3B]; and a multiplexing layer to multiplex a plurality of messages for transmission through the first tunneling layer [Bavadelar, HTTP tunnel may multiplex packets from the clients onto TCP connection, 0050].

3.   As per claim 2, Bavadekar discloses the first tunneling protocol (i.e.: TCP) opens the HTTP connection between a server and a client [Bavadekar, 0050].

4.   Claims 10-11,19-20 contain the similar limitations set forth of apparatus claims 1-2. Therefore, claims 10-11,19-20 are rejected for the similar rationale set forth in claims 1-2.

5.   As per claim 3, Bavadekar discloses a second tunneling layer (i.e.: HTTP tunnel) including a second tunneling protocol (i.e.: HTTP protocol) built upon the first layer to tunnel a message through the TCP connection [Bavadekar, 0050].

6.   As per claim 4, Bavadekar discloses the second tunneling protocol is used to open the TCP connection between the server and the client [Bavadekar, server-client, 0078].

7.   As per claim 5, Bavadekar discloses tunneling protocol opens the HTTP connection if the second tunneling protocol is not successful in opening the TCP connection [Bavadekar, exchange message, 0079].

8.   As per claim 6, Bavadekar discloses the messages include binary format [Bavadekar, digital signals, 0155].

9.   As per claim 7, Bavadekar discloss the plurality of messages includes a plurality of operational messages and a plurality of administrative messages [Bavadekar, administrative control, 0038].

10.   As per claim 8, Bavadekar discloses the operational messages include operational data [Bavadekar, parameter, 0148].

11.   As per claim 9, Bavadekar discloses the administrative messages can be selected from the group consisting of debug messages, firmware update messages and parameter configuration messages [Bavadekar, administrative control, 0038].

12.   Claims 10-27 contain the identical limitations set forth of apparatus claims 1-9.

Therefore, claims 10-27 are rejected for the similar rationale set forth in claims 1-9.

(10) Response to Argument

A. The 101 rejection:

Applicant argues the language of claims 1,10 and 19 is directed to statutory

matter.

Examiner disagrees and points out the claim language (i.e.: layers) was an

abstract idea.

B. The 102 rejection:

Claim1 :

Applicant argues the prior art does not teach or suggest the first layer including

TCP, a second layer including HTTP, a tunneling layer build upon the HTTP layer

(second layer) and a multiplexing layer to multiplex message through the tunneling

layer.

Examiner points out the prior art taught the HTTP with tunnel [Fig 4, HTTP tunnel

270, 272,274; 0073]. The tunneling connection including the TCP connection [Fig 5A,

tunneling 292, TCP connection 296], multiplexing client request onto TCP connection

[0074], HTTP tunneling allow to exchange message using TCP, 0079; 0086].

Claim 2:

Applicant argues the prior art does not teach or suggest the tunneling opens the

HTTP connection between a server and a client.

Examiner points out the prior art taught the HTTP tunnel 220 connected between client 200 and server 208 [Fig 3A].

Claim 3:

Applicant argues the prior art does not teach or suggest the HTTP tunnel send a message through the TCP connection.

Examiner points out the prior art taught the HTTP tunnel 214 sends a message through TCP connection 216 [Fig 3A].

Claim 4:

Applicant argues the prior art does not teach or suggest the second tunneling or HTTP tunnel is used to open the TCP connection between the server and the client .

Examiner points out the prior art taught the HTTP tunnel to open the TCP connection between the server 208 and the broker 202 or the client.

Claim 5:

Applicant argues the prior art does not teach or suggest the first tunneling protocol opens the HTTP connection if the second tunneling protocol is not successful opening the TCP connection.

Examiner points out the prior art taught exchange message using TCP, HTTP at runtime [0079]. It's clearly that the communication could comes from either side of the TCP or HTTP connection.

Claim 6:

Applicant argues the prior art does not teach or suggest the messages include binary format

Examiner points out the prior art taught digital signals -0155]

Claim 7:

Applicant argues the prior art does not teach or suggest the plurality of messages includes a plurality of operational messages and a plurality of administrative messages

Examiner points out the prior art taught administrative control [0038]

Claim 8:

Applicant argues the prior art does not teach or suggest the operational messages include operational data.

Examiner points out the prior art taught message data allow messages to be re-transmitted if necessary [0089].

Claim 9:

Applicant argues the prior art does not teach or suggest the administrative messages can be selected from the group consisting of debug messages, firmware update messages and parameter configuration messages

Examiner points out the prior art taught administrative control [0038]

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section **(9)** above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,

/Thong H Vu/

Primary Examiner, Art Unit 2619

A Technology Center Director or designee must personally approve the

new ground(s) of rejection set forth in section (9) above by signing below:

/Wellington Chin/

Conferees:

Wellington Chin

QAS

/JAYANTI K PATEL/

Supervisory Patent Examiner, Art Unit 2619

Jay Patel

SPE 2619